

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		<b>District Western</b>	
<b>Name (under which you were convicted):</b> Donita Pendleton		<b>Docket or Case No:</b> 08-0700-CV-W-GK-PH	
<b>Place of Confinement :</b> Chillicothe Correctional Center		<b>Prisoner No.:</b> 88160	
<b>Petitioner</b> (include the name under which you were convicted) Donita Pendleton	<b>V.</b>	<b>Respondent</b> (Authorized person having custody of Petitioner) Jennifer Miller, Warden	
<b>The Attorney General of the State of :</b> Missouri			

**PETITION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
St. Louis City Circuit Court - 22nd Judicial Circuit  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Criminal docket or case number (if you know): 94-11260  
\_\_\_\_\_
2. (a) Date of the judgment of conviction (if you know): January 30, 1996  
\_\_\_\_\_
- (b) Date of sentencing: January 30, 1996  
\_\_\_\_\_
3. Length of sentence: Life w/o Parole + Life + Life + Life (CS)  
\_\_\_\_\_
4. In this case, were you convicted on more than one count or of more than one crime? Yes X No  
\_\_\_\_\_
5. Identify all crimes of which you were convicted and sentenced in this case:  
First Degree Murder, Armed Criminal Action  
First Degree Robbery, Armed Criminal Action  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. (a) What was your plea? (Check one)

(1) Not guilty \_\_\_\_

(3) Nolo Contendere (no contest) \_\_\_\_

(2) Guilty X

(4) Insanity plea \_\_\_\_

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? n/a

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(c) If you went to trial, what kind of trial did you have? (check one)

Jury \_\_\_\_

Judge only \_\_\_\_

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes \_\_\_\_

No \_\_\_\_

8. Did you appeal from the judgment of conviction?

Yes \_\_\_\_

No X

9. If you did appeal, answer the following:

(a) Name of court: n/a

(b) Docket or case number (if you know): n/a

(c) Result: n/a

(d) Date of result (if you know): n/a

(e) Citation to the case (if you know): n/a

(f) Grounds raised: n/a

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(g) Did you seek further review by a higher state court? Yes \_\_\_\_ No X

If "Yes," answer the following:

(1) Name of court: n/a

(2) Docket or case number (if you know): n/a

(3) Result: n/a

(4) Date of result (if you know): n/a

(5) Citation of the case (if you know): n/a

(6) Grounds raised: n/a

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒  
If "Yes," answer the following:

(1) Docket or case number (if you know): n/a

(2) Result: n/a

(3) Date of result (if you know): n/a

(4) Citation to the case (if you know): n/a

10. Other than the direct appeals listed above, have you previously filed any other petition, application or motions concerning this judgement of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "YES," give the following information:

(a) (1) Name of court: St. Louis City Circuit Court 22nd Judicial District

(2) Docket or case number (if you know): don't know

(3) Date of filing (if you know): don't know

(4) Nature of the proceeding: Mo. Sup. Ct. Rule 24.035 (Form 40)

(5) Grounds raised: Ineffective Assistance of Counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?  
Yes ☐ No ☒

(7) Result: Judgment Affirmed

(8) Date of result (if you know): October 14, 1996

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: n/a

(2) Docket of case number (if you know): n/a

(3) Date of filing (if you know): n/a

(4) Nature of the proceeding: n/a

(5) Grounds raised: n/a

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?  
Yes \_\_\_ No \_\_\_

(7) Result: n/a

(8) Date of Result (if you know): n/a

(c) If you file any third petition, application, or motion, give the same information:

(1) Name of court: n/a

(2) Docket of case number (if you know): n/a

(3) Date of filing (if you know): n/a

(4) Nature of the proceeding: n/a

(5) Grounds raised: n/a

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes \_\_\_ No \_\_\_

(7) Result: n/a

(8) Date of result (if you know): n/a

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes \_\_\_ No x

(2) Second petition: Yes \_\_\_ No \_\_\_

(3) Third petition: Yes \_\_\_ No \_\_\_

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: Form 40 was untimely filed

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** Ineffective Assistance of Counsel

Sixth amendment right to effective assistance of counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Due to counsel's advice I entered a unknowing, involuntary, and unintelligent guilty plea, under threat of the death penalty if I had a jury trial.

(b) If you did not exhaust your state remedies on Ground One, explain why: n/a

**(c) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes      No     

(2) If you did not raise this issue in your direct appeal, explain why? n/a

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes X No     

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Mo. Sup. Ct. Rule 24.035 (Form 40)

Name and location of the court where the motion or petition was filed: St. Louis City Circuit Court

Docket or case number (if you know): don't know

Date of the court's decision: October 14, 1996

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order if available) \_\_\_\_\_

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No", explain why you did not raise this issue: time barred from filing appeal

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground One: none

**GROUND TWO:** Insufficient evidence to obtain conviction of First Degree Murder

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

There was no evidence to conclude that petitioner had acted "knowingly" and "deliberately". There was no forensic evidence tying petitioner to the crime. Had petitioner gone to trial, no juror would have found her guilty beyond a reasonable doubt.

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_  
time barred from proceeding with appeals \_\_\_\_\_  
\_\_\_\_\_

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes \_\_\_\_\_ No       

(2) If you did not raise this issue in your direct appeal, explain why?       n/a        
\_\_\_\_\_  
\_\_\_\_\_

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes \_\_\_\_\_ No   X  

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:       n/a      

Name and location of the court where the motion or petition was filed:       n/a        
\_\_\_\_\_

Docket or case number (if you know):       n/a      

Date of the court's decision:       n/a      

Result (attach a copy of the court's opinion or order, if available):       n/a        
\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) Did you appeal from the denial of your motion or petition?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes \_\_\_\_\_ No \_\_\_\_\_

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:       n/a        
\_\_\_\_\_

Docket or case number (if you know):       n/a      

Date of the court's decision:       n/a      

Results (attach a copy of the court's opinion or order if available)       n/a        
\_\_\_\_\_

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No," explain why you did not raise this issue: time barred

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground Two: none

**GROUND THREE:** Warrantless Search and Seizure

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Petitioner's arrest was made without a warrant  
and without authority and probable cause.

(b) If you did not exhaust your state remedies on Ground Three, explain why: n/a

**(c) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes      No     

(2) If you did not raise this issue in your direct appeal, explain why: n/a

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes      No X

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a



Remark (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion or petition?

Yes \_\_\_\_ No \_\_\_\_

(4) Did you appeal from the denial of your motion or petition?

Yes \_\_\_\_ No \_\_\_\_

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes \_\_\_\_ No \_\_\_\_

(6) If your answer to Question (d)(4) is "Yes," state

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Results (attach a copy of the court's opinion or order if available) n/a

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground Three: none

**GROUND FOUR:** Actual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Co-defendant told police during her interrogation that  
petitioner did not kill the victim. Petitioner was not in  
the house when victim was killed.

(b) If you did not exhaust your state remedies on Ground Four, explain why: time barred

**(c) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes \_\_\_\_ No \_\_\_\_

(2) If you did not raise this issue in your direct appeal, explain why? n/a

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**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes \_\_\_\_ No \_\_\_\_

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

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Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach of copy of the court's opinion or order, if available): n/a

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(3) Did you receive a hearing on your motion or petition?

Yes \_\_\_\_ No \_\_\_\_

(4) Did you appeal from the denial of your motion or petition?

Yes \_\_\_\_ No \_\_\_\_

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes \_\_\_\_ No \_\_\_\_

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

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Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order if available) n/a

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(7) If your answer to Question (d)(4) or Questions (d)(5) is "No", explain why you did not raise this issue: time barred

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground Four: none

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes \_\_\_ No X

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: Petitioner was time barred from presenting claims

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: same as above

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes \_\_\_ No X

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available: \_\_\_\_\_

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal for the judgment you are challenging? Yes \_\_\_ No X

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: \_\_\_\_\_

16. Give the name and address, if you know, of each attorney who represented you in the following state of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: n/a

(d) At sentencing: n/a

(e) On appeal: n/a

(f) In any post-conviction proceeding: n/a

(g) On appeal from any ruling against you in a post-conviction proceeding: Gwenda Robinson  
Assistant Public Defender, St. Louis, Missouri

17. Do you have any future sentence to serve after you complete the sentence for the judgment you are challenging? Yes X No    

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:  
St. Louis City Circuit Court - 22nd Judicial Circuit

(b) Give the date the other sentence was imposed: January 30, 1996

(c) Give the length of the other sentence: Life + Life + Life (CS)

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes X No    

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*(see below) Petitioner is asserting a claim of actual  
innocence as a gateway to defaulted claims

\*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period limitations shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitations period shall run from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the

expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitution right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of true diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitations under this subsection.

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Therefore, petitioner asks that the Court grant the following relief: to be granted an  
evidentiary hearing or whatever relief is deemed necessary.

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or any other relief to which petitioner is entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 9-16-08 (month, date, year).

Executed (signed) on 9-16-08 (Date).

Danita Pennington  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_